MONTANA LEGISLATIVE HISTORY

Chapter 476 19 85

Bill H _____ S 332 Original bill & history ✓C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	3-21	✓C	Hearing Date(s)	2-19	✓C
	_____	___C		_____	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	_____	___C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

3/11	COMMITTEE REPORT-BILL PASS AS AMENDED		
3/14	FISCAL NOTE RECEIVED		
3/18	2ND READING PASS	37	10
3/20	3RD READING PASS	50	0
	TRANSMITTED TO HOUSE		
3/21	REFERRED TO TAXATION		
3/25	HEARING		
	DIED IN COMMITTEE		

SB 331 INTRODUCED BY CHRISTIAENS, REGAN, ET AL.
PRIVATE ENFORCEMENT OF HUMAN RIGHTS COMMISSION ORDERS
BY REQUEST OF MONTANA HUMAN RIGHTS COMMISSION

2/06	INTRODUCED		
2/06	REFERRED TO JUDICIARY		
2/14	HEARING		
2/14	COMMITTEE REPORT-BILL DO PASS		
2/16	2ND READING PASS	47	0
2/19	3RD READING PASS	44	0
	TRANSMITTED TO HOUSE		
2/27	REFERRED TO JUDICIARY		
3/19	HEARING		
3/19	COMM REPORT-BILL CONCURRED AS AMENDED		
3/22	2ND READING CONCURRED	85	6
3/25	3RD READING CONCURRED	93	7
	RETURNED TO SENATE WITH AMENDMENTS		
4/02	2ND READING AMENDMENTS CONCURRED	50	0
4/04	3RD READING AMENDMENTS CONCURRED	50	0
4/12	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/18	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 539 EFFECTIVE DATE: 4/18/85		

SB 332 INTRODUCED BY TOWE, CRIPPEN, ADDY
LIBRARY CONFIDENTIALITY ACT
BY REQUEST OF SENATE JUDICIARY COMMITTEE

2/06	INTRODUCED		
2/06	REFERRED TO JUDICIARY		
2/19	HEARING		
2/20	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/22	2ND READING PASS	48	1
2/25	3RD READING PASS	45	3
	TRANSMITTED TO HOUSE		
2/27	REFERRED TO JUDICIARY		
3/21	HEARING		
3/21	COMM REPORT-BILL CONCURRED AS AMENDED		
3/23	2ND READING CONCURRED	80	12
3/26	3RD READING CONCURRED	90	9
	RETURNED TO SENATE WITH AMENDMENTS		
4/02	2ND READING AMENDMENTS CONCURRED	50	0
4/04	3RD READING AMENDMENTS CONCURRED	50	0

4/11 SIGNED BY PRESIDENT
4/11 SIGNED BY SPEAKER

4/12 TRANSMITTED TO GOVERNOR
4/15 SIGNED BY GOVERNOR
CHAPTER NUMBER 476 EFFECTIVE DATE: 10/01/85

SB 333 INTRODUCED BY CHRISTIAENS, MILLER, MAZUREK, ET AL.
SECURED PARTY OR CREDITOR MAY TRANSFER TITLE AND RECORD LIEN AFTER 20 DAYS

2/06 INTRODUCED
2/07 REFERRED TO BUSINESS & INDUSTRY
2/12 HEARING
2/16 COMMITTEE REPORT-BILL PASS AS AMENDED
2/19 2ND READING PASS 45 0
2/21 3RD READING PASS 48 0

TRANSMITTED TO HOUSE
2/27 REFERRED TO BUSINESS & LABOR
3/20 HEARING
3/20 COMMITTEE REPORT-BILL CONCURRED
3/23 2ND READING CONCURRED 94 0
3/25 3RD READING CONCURRED 99 0

RETURNED TO SENATE
3/30 SIGNED BY PRESIDENT
3/30 SIGNED BY SPEAKER

4/01 TRANSMITTED TO GOVERNOR
4/04 SIGNED BY GOVERNOR
CHAPTER NUMBER 358 EFFECTIVE DATE: 10/01/85

SB 334 INTRODUCED BY CRIPPEN, SANDS, HARPER, ET AL.
REVISING NONGAME WILDLIFE CHECKOFF PROVISIONS AND ADMINISTRATIVE COSTS

2/06 INTRODUCED
2/07 REFERRED TO FISH & GAME
2/08 FISCAL NOTE REQUESTED
2/14 FISCAL NOTE RECEIVED
2/14 HEARING
2/21 COMMITTEE REPORT-BILL PASS AS AMENDED
2/23 2ND READING PASS AS AMENDED 35 13
2/25 3RD READING PASS 41 [illegible]

TRANSMITTED TO HOUSE
2/27 REFERRED TO TAXATION
3/20 HEARING
3/26 COMMITTEE REPORT-BILL CONCURRED
3/30 2ND READING CONCURRED 85 11
4/01 3RD READING CONCURRED 88 12

RETURNED TO SENATE
4/05 SIGNED BY PRESIDENT
4/08 SIGNED BY SPEAKER

4/08 TRANSMITTED TO GOVERNOR
4/11 SIGNED BY GOVERNOR
CHAPTER NUMBER 436 EFFECTIVE DATE: 10/01/85

Senate BILL NO. 332

INTRODUCED BY [signature]

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CONFIDENTIALITY OF LIBRARY RECORDS; AMENDING SECTIONS 2-6-101 AND 2-6-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [This act] may be cited as the "Montana Library Records Confidentiality Act".

NEW SECTION. Section 2. Definitions. As used in [section 3], the following definitions apply:

(1) "Library" means a library that is established by the state, a county, city, town, school district, or a combination of those units of government, a college or university, or any private library open to the public.

(2) "Library records" means any document, record, or any other method of storing information retained, received, or generated by a library that identifies a person as having requested, used, or borrowed library material or other records identifying the names of library users. Library records does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general.

NEW SECTION. Section 3. Nondisclosure of library records. (1) No person may release or disclose a library record or portion of a library record to any person except in response to:

(a) a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library; or

(b) an order issued by a court of competent jurisdiction, upon a finding that the disclosure of such record is necessary because the merits of public disclosure clearly exceed the demand for individual privacy.

(2) A library is not prevented from publishing or making available to the public reasonable statistical reports regarding library registration and book circulation if those reports are presented so that no individual is identified therein.

Section 4. Section 2-6-101, MCA, is amended to read:

"2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive,

LC 1843/01

INTRODUCED BILL
SB 332

whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings, except as provided in [section 3].

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private."

Section 5. Section 2-6-102, MCA, is amended to read:

"2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in [section 3] and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing."

NEW SECTION. Section 6. Penalty. Any person who violates [section 3] is guilty of a misdemeanor and is

liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or $100, whichever is greater, reasonable attorney fees, and the costs of bringing the action.

NEW SECTION. Section 7. Codification instruction. Sections 1 through 3 and 6 are intended to be codified as an integral part of Title 22, chapter 1, and the provisions of Title 22, chapter 1, apply to sections 1 through 3 and 6.

-End-

CHAIRMAN--MAZUREK, JOE
SECRETARY-STALEY, CINDY
NORMAL SCHEDULE==> SITE: OLD SUPREME COURT ROOM DAYS: M-TU-W-TH-F TIME: 10:00 A.M.-12 NOON

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
SB0299	2/01	2/15	2/23	TABLED		2/15
STORY, PETE			TRANSFER FROM DNRC TO DISTRICT COURTS AUTHORITY TO DETERMINE WATER RIGHTS			
SB0313	2/04	2/14	2/14, 2/15			
DANIELS, M.K.			CONSTITUTIONAL REFERENDUM TO PROVIDE FOR ONE SENATOR PER COUNTY			
SB0321	2/04	2/18		DO PASS		2/18
FULLER, DAVID E.			CONSIDER DANGER TO COMMUNITY, OTHERS TO SET BAIL; EXPAND BAIL CONDITIONS			
SB0322	2/05	2/19		PASS AS AMENDED		2/19
TOWE, THOMAS E.			ALLOWING INTEREST ON A TORT FROM PRESENTING WRITTEN CLAIM			
SB0328	2/11	2/15		PASS AS AMENDED		2/16
BROWN, BOB			AMEND LAW GRANTING IMMUNITY TO PERSON GIVING BLOOD ALCOHOL TEST			
SB0331	2/06	2/14		DO PASS		2/14
CHRISTIAENS,B.F. CHRIS			PRIVATE ENFORCEMENT OF HUMAN RIGHTS COMMISSION ORDERS			
SB0332	2/06	2/19		PASS AS AMENDED		2/19
TOWE, THOMAS E.			LIBRARY CONFIDENTIALITY ACT			
SB0351	2/08	2/15		ADVERSE REPORT		2/15
KEATING, THOMAS F.			RESTITUTION TO VICTIMS OF ACCIDENTS CAUSED BY UNINSURED MOTORISTS			
SB0352	2/08	2/21	2/21	DO PASS		2/21
LYBECK, RAY			RAISE TO 18 AGE FOR ENDANGERING WELFARE OF CHILDREN			
SB0364	2/09	2/21		PASS AS AMENDED		2/23
PINSONEAULT,R.J.(DICK)			DEATH PENALTY FOR SELLING OPIATE TO A PERSON WHO DIES FROM USING IT			
SB0375	2/13	2/20		PASS AS AMENDED		2/22
TOWE, THOMAS E.			CONDITIONAL RELEASE OF MENTAL HEALTH PATIENTS - REVOCATION OF COND. RELEASE			

6

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 19, 1985

The thirty-fourth meeting of the Senate Judiciary Committee was called to order at 10:08 a.m. on February 19, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senators Galt and Yellowtail who were excused.

CONSIDERATION OF SB 406: Senator J. D. Lynch, sponsor of SB 406, testified this is merely a housekeeping bill. He then submitted proposed amendments prepared by Mr. Petesch, which were also housekeeping in nature (Exhibit 1).

PROPONENTS: Larry Majerus, Administrator, Motor Vehicle Division of the Department of Justice, testified this bill contains language which would replace specific divisions within the department with the words "Department of Justice." They define these things in terms of function. Mr. Majerus also proposed amendments to the bill (Exhibit 2).

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked Mr. Petesch to explain the amendments. Mr. Petesch replied the proposed amendments are housekeeping in nature. They deal with the forensics division. Mr. Majerus commented he agreed with the amendments proposed on Exhibit 1.

CLOSING STATEMENT: None.

Hearing on SB 406 was closed.

CONSIDERATION OF SB 381: Senator Cecil Weeding, sponsor of SB 381, testified this bill was requested by the Treasure County Attorney and was originally drafted by Senator Manning. It provides an additional category of an offense for driving under the influence of alcohol and imposes two new penalties for that offense. It creates the offense of aggravated driving under the influence. It's designed to cover that extremely irresponsible person who is a major menace on the highway.

PROPONENTS: Gary Ryder, Treasure County Attorney testified in support of the bill (see witness sheet attached as Exhibit 3). He stated this

be revealed to the jury and should not be considered an admission of liability. Most often that is an agreement and is generally entered into by counsel. It is usually stipulated out of the case, so it usually doesn't come up. It is not an issue that should happen or should concern us. He thinks we should leave the language alone. He has worked on this bill with the insurance agents. The bill originally came out of a meeting with the agents in Billings. The insurance companies have worked on it. He is pleased they are all trying to work for the common goal, and that is to improve justice in our courts.

Hearing on SB 322 was closed.

CONSIDERATION OF SB 332: Senator Tom Towe, sponsor of SB 332, testified this bill provides for confidentiality of library records. This was presented to him by the librarian in Billings. It has been discussed and is generally supported by libraries throughout the country. The issue has arisen regarding whether or not a librarian should disclose to law enforcement the library records of individuals who have checked out books. This matter was addressed some ten years ago in the 1975 and 1977 sessions when he proposed a comprehensive privacy bill. That bill did not pass, and we are now doing it on a piecemeal basis. This is one of the pieces. An individual himself should always be able to get his own information. Senator Towe then asked that the committee consider an amendment (Exhibit 10) which addresses the matter of turning the records over to the county attorney or someone else for collection. Senator Towe believes the problem is when an over-zealous law enforcment officer is trying to find out if some person is guilty of blowing up a building, he goes to the library to find out if he has checked out a book relating to that type of matter. The problem is everyone that has checked out a similar book immediately becomes suspect. That is what we are talking about. We cannot allow open dissemination of these records. It may not be the county attorney. It may be some local person. That has a chilling effect on reading and literature that we want to avoid.

PROPONENTS: Sara Parker, State Librarian, presented written testimony in support of the bill (Exhibit 11). Barbara Rudio, President of the Montana Library Association, presented written testimony in support of the bill (see witness sheet attached as Exhibit 12). Paul Dunham, University of Montana System and Montana Library Association, testified they have three concerns with the bill: (1) Its effect on overdue book fining policies. (2) The effect on libraries with manual card check-out systems. (3) The effect on academic plagiarism. He suggested amending page 2, line 3, to read willful disclosure. He testified all librarians are in support of the bill. Deborah Schlesinger, Legislative Chair of the Montana Library Association, presented written testimony in support of the bill (see witness sheet attached as Exhibit 13). Brenda Schye,

representing the Montana Arts Advocacy, presented written testimony in support of the bill (see witness sheet attached as Exhibit 14). Judy Meadows, State Law Librarian, presented written testimony in support of the bill (see witness sheet attached as Exhibit 15).

OPPONENTS: Mike Meloy, on behalf of the Montana Press Association, testified the bill as presented does not provide any sweeping confidentiality. There are some conceptual problems and one drafting problem. The Press Association is opposed and has been opposed to any blanket approach to confidentiality. Article II, section 10, of the constitution affords the individual the opportunity to assert confidentiality. What this bill does is it doesn't really care what the individual wants. If you wanted to conform this bill to the constitution, he thinks the individual has to assert the right. If the individual doesn't want anybody to look at his records, then he thinks that would conform to the spirit of the constitution. Mr. Meloy felt page 2, subsection (b), is backwards from the constitution's saying the public has a right to examine all documents in public agencies unless the merits of public rights exceed the merits of privacy. He does not believe that will withstand a constitutional challenge. The constitution says everything is open unless it affects individual privacy. He asked how many times lawyers have gone to a law library to look at a book, and the book was not there. The librarian would say he couldn't tell you who has it because the checkout list is confidential. He asked that the committee consider some amendments to let the individual assert the right of privacy.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault addressed Ms. Parker and stated it is his initial impression we are stepping on mice and watching the elephants go by. He asked how long she had been in the business. Ms. Parker responded 22 years. Senator Pinsoneault then asked how many times she had someone come in who she thought was really up to some mischief. Ms. Parker replied maybe five or six times a year. The question of who has the book checked out comes up three or four times a day. She has seen some actual harassment of one user over another who wants to use the book. Senator Mazurek addressed the penalty provision and asked Senator Towe why it was necessary to provide for attorneys' fees. Senator Towe answered the proposal is for a small fine, but attorneys' fees if you have to pressure the matter. That was a suggestion, but he has no strong feelings on it one way or the other. Senator Mazurek then asked Senator Towe to address Mr. Meloy's testimony. Senator Towe first addressed the individual's asserting the position and not the other way around. He pointed out the next section of the constitution says the individual rights of privacy are protected. The very next section says the right of the individual to privacy shall be protected unless there is an overwhelming governmental interest in

disclosure. He questioned whether we would want to use the same system with regard to police records. They are open to everybody unless the individual comes forth and says don't let my records out. He had no problem with using the constitutional language that the judge shall find a compelling state interest in allowing disclosure. He is happy because when you go to the law library to find a book, you can ask the librarian to tell the person who has checked out the book someone else wants it. Senator Towe felt Mr. Meloy's problems were easily solved, and the committee did not need to avoid confidentiality on those bases. Senator Pinsoneault asked if they had an incidence where a police officer came in and wanted to see someone's records. Ms. Schlesinger answered in a case of arson and murder, a sheriff asked to see the records. She explained the Lewis and Clark County Library has a confidentiality policy, but had the sheriff pursued the matter, she would not have been protected by law. Senator Mazurek questioned whether they wanted to involve the court system in matters of plagiarism. Senator Towe responded he didn't think that was a problem. If it is that serious, he believes maybe the university system should take a look at it. Senator Mazurek questioned whether they were then elevating that to a criminal proceeding when it would generally be handled through the university system. Senator Towe replied it does not have to be a criminal proceeding. Senator Mazurek asked if he needed a book, would the librarian call the person who has it and ask them to return it. Ms. Schlesinger replied they have a procedure for recall of books, but they do not tell the requesting person who has the book.

CLOSING STATEMENT: Senator Towe stated he thinks section 10 of the constitution is a good one and should be followed. What we are dealing with is a matter of privacy until there is a showing of compelling state interest.

Hearing on SB 332 was closed.

ACTION ON SB 406: Senator Pinsoneault moved adoption of the amendments contained on Exhibits 1 and 2. Senator Mazurek explained this makes the Attorney General the head of the Department of Justice and puts the Division of Motor Vehicles under the Department of Justice. The motion carried unanimously. Senator Pinsoneault moved SB 406 be recommended DO PASS AS AMENDED. The motion carried unanimously.

ACTION ON SB 322: Senator Brown moved SB 322 be recommended DO NOT PASS. Senator Mazurek commented he felt this was a good bill this year. Senator Towe moved as a substitute motion that the amendments contained on Exhibits 6 and 7 be accepted as modified thereon. The motion carried unanimously. Senator Towe moved SB 322 be recommended DO PASS AS AMENDED. The motion carried with Senators Crippen and Shaw voting in opposition.

ACTION ON SB 332: Senator Shaw stated he has no real reservations about this bill, but he has a problem about locking a public place up like this. He is concerned that you have to get a court order. Senator Towe explained you have to show compelling interest. Senator Mazurek stated he thinks in the example (murder investigation), you could have gone to the court on the basis of probable cause and obtained a subpoena to get a list of the books checked out. Senator Brown stated he thinks what occurs is how would a cop have known what someone would have done that may make him think looking at his library records might help. Senator Pinsoneault asked Ms. Schlesinger if the records were now becoming so sophisticated and computerized they could tell how many books he had checked out for the last 16 months. She replied yes. Senator Crippen pointed out that in section 6, any person who violates section 3 is guilty of a misdemeanor. Senator Mazurek stated he would like to strike everything after "disclosed" or at least strike the attorneys' fees. If you have damages, it is worth going after, but you don't want to encourage them to do it. Senator Towe commented that if you take out attorneys' fees, you might as well take out the $100. He believes it does improve the enforcement considerably. Senator Towe moved adoption of the amendment contained on Exhibit 10. The motion carried unanimously. Senator Towe then moved SB 332 be recommended DO PASS AS AMENDED. The motion carried with Senators Pinsoneault and Shaw voting in opposition.

FURTHER CONSIDERATION OF SB 217: Senator Towe announced Mike Abley, Administrator of the Montana Supreme Court, was present to make some comments on the fiscal note. Mr. Abley explained this turned out to be a complicated fiscal note. He worked on an estimate which would run $112,000 per court. That would run about $78,500 to the community and $33,600 to the state. He believes the revenues generated will far exceed the cost of the court. The city generating the least amount of revenue (Missoula) is generating about $69,000. When you add the expanded jurisdiction, that goes up to $100,000. Senator Mazurek asked what the impact would be on the district court. Mr. Abley responded there would be a decrease in district courts and some justice courts. Senator Towe asked if the revenues that would be collected at the lower level will more than offset the cost to the cities. Mr. Abley responded yes. Senator Towe asked if the cities would come out with a net gain. Mr. Abley responded yes. He also explained 70% of the expenses of the court are remitted to the state. They make $1 million, but they are only remitting $78,000. The ones that are coming out ahead are the municipal courts. The outlying counties will have a decrease in revenue. Senator Mazurek questioned whether it were fair that the city court will collect the fine for the offense which occurred in the county. Senator Towe replied they are also paying for that court system. He also felt

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 02/98

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt			X
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.			X
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

DATE February 19, 1985

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
BRENDA SCHYE	MONTANA ARTS ADVOCACY	SB332	X	
DEBORAH SCHLESINGER	MONTANA LIB ASSOC	SB332	X	
Barbara Rudio	Montana Lib Assoc.	SB332	X	
Maurice Taintor	Montana Lib Assoc	SB332	X	
Paul Tuntan	MT-UNIV. System	SB332		
Judy Meadows	State Law Library	SB332	✓	
Brenda Desmyter	State Law Library	SB332	✓	
Gary Ryder	Treasure County	SS381		
Bonnie Tippy	Alliance of American Insurers	SB322	X	
Roger McGlenn	INDEPENDENT INSURANCE AGENTS ASSOC. OF MT	SB322	✓	
David LACKMAN	MT Public Health Assn	SB381	X	
Kim Kradolfer	Attorney General	SB 381 SB 406	X	X X
Sara Parker	State Library	SB332	X	

(Please leave prepared statement with Secretary.)

AMENDMENTS
SENATE BILL 332

1. Page 2.
Following: line 17
Insert: "(3) Library records may be disclosed to the extent necessary to return overdue or stolen materials or collect fines."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 021985
BILL NO. SB 332

MONTANA STATE LIBRARY

TED SCHWINDEN, GOVERNOR

1515 E. 6TH AVENUE

STATE OF MONTANA

(406) 444-3115

HELENA, MONTANA 59620

This is testimony on SB332 concerning the confidentiality of library records. My testimony is to speak to the nature of American libraries. You will remember our founding fathers put together this nation on belief in freedom of thought, freedom of speech and freedom of the press. It was the belief of those men that an educated and informed people could govern themselves, and when we look at the history of those ideas and the American Revolution from which they came, it is known to us that the tolerance for a wide variety of political views was an inherent part of the beginnings of this nation. When libraries began to be established in the late 18th century, and certainly with the beginning of public libraries in the 1840's and 1850's, these freedoms and these tolerances were used as the basis for building American libraries, whether they be school, academic or public libraries. We have, in this country, a 150-year tradition of libraries and library collections which contain all political viewpoints and all writings. We have both truth and fiction. We have in libraries the crackpot theories, the scholarly research and the creative endeavors of poets, writers, filmmakers and artists. With this tradition of library collections and with the basic beliefs in freedom of speech, freedom of the press and tolerance for the views of others, the ability to use libraries must be as broad as the libraries themselves. This means people need to be able to use libraries without fear and without infringement upon the freedom to read. No reader wants to see their list of books printed in a newspaper or discussed over the backyard fence. One of the library statements of rights says each person has the right to a library which gives full and prompt access to all recorded fact, opinion and creative effort in whatever physical form he feels is most useful to him and the books, films, works of art and music he wants to see and hear, an opportunity to encounter the new material and creative works of which he may not be aware.

The State Library Commission and I support SB332 and ask you to recomment its passage.

Thank you.

Sara Parker
State Librarian
February 19, 1985

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 021985
BILL NO. SB 332

SENATE JUDICIARY
EXHIBIT NO. 12
DATE 021985
BILL NO. SB 332

NAME Barbara Rudio BILL NO. SB 332

ADDRESS 1119 Lincolnwood, Missoula DATE 2-19-85

WHOM DO YOU REPRESENT Montana Library Association

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

On behalf of the almost 600 members of the Montana Library Association I urge a positive recommendation from this committee for SB 332. The bill offers necessary protection for the privacy of library patrons, including students, & legal protection of librarians.

It very clearly states that library records that identify patrons will only be released under court order or at the request of the patron himself. This eliminates the necessity for each individual demand for information to have to be interpreted by an attorney. Recently Montana libraries of all types have been subject to requests or demands for names of persons who read particular books or particular types of books. As the law is now written, librarians are unclear as to how they should respond to such demands, & sometimes put themselves into a position that is open to suit. The material a person choses to read reveals a great deal about his personality, his problems & worries, his health & we

To allow these revelations to be open to public scrutiny would be an extreme infringement on that patron's right to privacy.

Barbara Budia

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 021985
BILL NO. SB 332

CITY OF BILLINGS
PARMLY BILLINGS LIBRARY
JOINT CITY - COUNTY LIBRARY
510 NORTH BROADWAY
BILLINGS, MT 59101
PHONE (406) 657-8257

February 14, 1985

TO: BARBARA RUDIO, ACTING DIRECTOR

FROM: ELLEN NEWBERG, LIBRARY DIRECTOR *en*

RE: TESTIMONY FOR LIBRARY CONFIDENTIALITY BILL

Convinced of the value of intellectual freedom in a democracy, I would support a confidentiality bill like this one in any case. The following experience made me even more aware of the need for Montana citizens to be guaranteed the right and freedom to read whatever they choose with the assurance that their choice of reading material will not be used against them without due process.

In early 1983, I received a letter from an attorney for Bechtel Corporation requesting a list of all library materials used by a former employee. The employee was claiming disability for a back injury, and Bechtel was attempting to prove that the employee was malingering. In a telephone conversation with the attorney, the gist of the conversation was that if it could be proved that the employee had read up on back injuries, it could be inferred that it had been done to accurately fake an injury.

This is a classic example of why I, along with the library community, believe Montana citizens' right to read in privacy has to be protected. Many people come into our library to read up on illnesses and disabilities in an effort to learn about and cope with their health problems or those of loved ones. To subject them to the casual inquiries of others free to draw whatever assumptions they like to support their purposes is not in keeping with the spirit of the first and fourth Constitutional amendments.

I therefore respectfully request that the greatest and most serious consideration be given to this bill which will guarantee Montanans the right to read what they want without fear of reprisal without due process. Thank you.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 021985
BILL NO. SB 332

(This sheet to be used by those testifying on a bill.)

NAME: DEBORAH SCHLESINGER DATE: 2-19-85

ADDRESS: LEWIS + CLARK LIBRARY, HELENA, MT

PHONE: 442-2373

REPRESENTING WHOM? MONTANA LIBRARY ASSOC.

APPEARING ON WHICH PROPOSAL: SB 332

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT: My name is Deborah Schlesinger, legislative chair of the Montana Library Assoc. We support SB 332 as amended. As leg chair I have traveled fairly wide in Montana and am delighted to report that the library community enthusiastically supports the Confidentiality of library records bill. This bill will not change the way libraries do business, it will afford the protection of the law to librarians + patrons. Academic, special, school + public libraries I have talked to, enthusiastically support both the concept + SB 332. The Montana Library Assoc. is aware of the need for protection + due process both for librarians + for library patrons.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

LIBRARIANS + PATRONS PRESENTLY DO NOT HAVE THE PROTECTION OF THE LAW EVEN THOUGH MANY INDIVIDUAL LIBRARIES DO HAVE CONFIDENTIALITY POLICIES.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 021985
BILL NO. SB 332

19

NAME Brenda Schye BILL NO. SB 332

ADDRESS North Star Rte, Glasgow DATE 2-19-85

WHOM DO YOU REPRESENT Montana Arts Advocacy

SUPPORT X OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I represent the Montana Arts Advocacy, a cross-section of Montanans who are committed to the development of Montana's cultural resources.

Particularly in rural areas, libraries tend to be the cultural heart of the community. They are centers for information and research, recreation, and life-long learning. As we evolve into an information-based society, the role of libraries will become even more vital.

In order to encourage full utilization of library services, it seems only logical that library patrons should be entitled to rights of privacy. What you read, whether for recreation or information, should not be subject to public scrutiny. Unencumbered accessibility to the types of information available in libraries is critical to a democracy.

We urge your support of SB 332 with Sen. Towe's amendment regarding retrieval of materials.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 021985
BILL NO. SB 332

(This sheet to be used by those testifying on a bill.)

NAME: Judy Meadows DATE: 2/19/85

ADDRESS:

PHONE: x3660

REPRESENTING WHOM? State Law Library

APPEARING ON WHICH PROPOSAL: SB 332

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENT:

Testifying on support of concepts of privacy & intellectual freedom. The State Law Library's policy is to not divulge circulation records to anyone. If an attorney, judge or other patron requires library material that has been checked out, the librarians will contact the borrower & recall the requested material.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 15
DATE 021985
BILL NO. SB 332

21

STANDING COMMITTEE REPORT

February 19 19 35

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 332

first reading copy (white color)

LIBRARY CONFIDENTIALITY ACT

Respectfully report as follows: That SENATE BILL No. 332

be amended as follows:

1. Page 2.
Following: line 17
Insert: "(3) Library records may be disclosed to the extent necessary to return overdue or stolen materials or collect fines."

AND AS AMENDED

DO PASS

~~DO NOT PASS~~

Senator Joe Mazurek
Chairman.

20

(To be kept current -- post bills when entering being heard or leaving committee.) Form CS-32

STATUS SHEET

FORTY-NINTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 322	2/27/85	3/19/85 3/28/85	3/28/85					3/28/85	
SB 327	2/27/85	3/19/85	3/19/85				3/19/85		
SB 328	2/27/85	3/19/85 3/27/85	3/27/85						3/27/85
SB 331	2/27/85	3/19/85	3/19/85					3/19/85	
SB 332	2/27/85	3/21/85	3/21/85					3/21/85	
SB 257	2/27/85	3/15/85	3/15/85					3/15/85	
SB 267	2/27/85	3/15/85	3/15/85				3/15/85		
SB 268	2/27/85	3/20/85 3/26/85	3/26/85					3/26/85	
SB 290	2/27/85	3/15/85	3/15/85				3/15/85		
SB 292	2/27/85	3/15/85	3/15/85				3/15/85		
SB 294	2/27/85	3/21/85	3/21/85				3/21/85		
SB 352	2/27/85	3/21/85	3/21/85				3/21/85		
SB 406	2/27/85	3/22/85	3/22/85					3/22/85	
SB 116	3/7/85	3/25/85 3/27/85	3/30/85 (Tabled 3/27/85)		(Un-tabled 3/29/85)			3/30/85	
SB 375	3/7/85	3/20/85 3/27/85	3/27/85					3/27/85	
SB 376	3/7/85	3/20/85 3/27/85	(Tabled 3/27/85)						

Use a separate sheet for Senate, House Bills and R

23

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 21, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Thursday, March 21, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Brown.

CONSIDERATION OF SENATE BILL NO. 332: Senator Tom Towe, District #46, chief sponsor of SB 332, testified. Senator Towe said this bill deals with the access to library records. He said the problem arises when somebody wants to see how many people have checked a particular book out of the library. He said the library people would just as soon not be required to disclose that information. With this bill, they would not have to disclose that particular information. He explained the sections of the bill in fuller detail. He feels that librarians need this type of protection to make sure that when they refuse to disclose this kind of information, they will be supported.

Sara Parker, state librarian, testified as a proponent to this bill. She told the committee that the inquiries range from the very casual inquiries to the more serious inquiries. She feels this bill is needed to protect librarians who refuse to disclose this requested information.

Deborah Schlesinger, legislative chair of the Montana Library Association; Lois Fitzpatrick, director of the Carroll College library and Brenda Schye, representing the Montana Arts Advocacy all testified as proponents to the bill. A copy of Ms.Schlesinger's written testimony was marked Exhibit A and attached.

There being no further proponents or opponents, Senator Towe closed.

The floor was opened to questions from the committee.

Rep. Gould referred to the penalty provision of the bill with regard to attorneys fees and asked if the person who brings the action loses the case, can the defendant collect the attorneys fees? Senator Towe said "no, not in this bill."

Rep. Mercer said that while he is in total agreement of the intent of the bill, will it require the library to completely redo its system? Ms. Parker said the bill is not intended

in anyway to require that libraries change their circulation system even though a number of libraries are interested in doing so. She said that her assumption is that if libraries do not change their systems, anyone will be able to go to the library shelves and still obtain the names of the people who checked out a particular book.

There being no further questions, hearing closed on SB 332.

CONSIDERATION OF SENATE JOINT RESOLUTION No. 19: Senator Richard Manning, District #18, chief sponsor of this resolution, testified on its behalf. A copy of his written testimony was submitted and marked Exhibit B which is hereto attached.

Ray Blehm from Billings, testified on behalf of SJR 19. A copy of his written testimony was marked Exhibit C and attached hereto.

There being no further proponents or opponents, Senator Manning closed. Senator Manning said this resolution was introduced at the request of the Great Falls postal workers who were interested in sending a message to Congress urging the repeal of the Hatch Act.

The floor was opened to questions from the committee.

Rep. Addy said the other side of the coin is that if public employees are allowed to participate in politics, their jobs are going to be more dependent on political participation. Senator Manning said that although there may be a little of this, we have provision in the law that protects individuals' rights a lot more to some degree.

There being no further questions, hearing closed on SJR 19.

CONSIDERATION OF SENATE BILL NO. 352: Senator Ray Lybeck, District #4, chief sponsor of SB 352, testified. This bill deals with an existing law. The bill was submitted at the request of the County Association of Probation Officers. The only thing the bill does is raise the victim age cutoff from 16 to 18 years of age for purposes of the offense of endangering the welfare of children.

There being no further proponents or opponents, Senator Lybeck closed.

There were no questions, and the hearing closed on SB 352.

[illegible]ATION OF SENATE BILL NO. 453: Senator Fred Van [illegible]istrict #30, chief sponsor of SB 453, testified. [illegible]453 is somewhat similar to HB 794, but it [illegible]y different. It would provide for the [illegible]electronic surveillance when there [illegible]ces or barricaded subjects.

ACTION ON SENATE BILL NO. 332: Rep. Hammond moved that SB 332 BE CONCURRED IN. The motion was seconded by Rep. Keyser.

Rep. Addy moved to amend on page 1, line 23, following "names" by inserting "or other personal identifiers". The motion was seconded by Rep. Hammond and carried unanimously.

Rep. Addy further moved to amend on page 2, line 1 following "general" inserting "or records that are not retained or retrieved by personal identifier". The motion was seconded by Rep. Rapp-Svrcek and carried unanimously. Furthermore, Rep. Addy moved to amend on page 4, line 7 following "greater" strike ", reasonable" and insert ". Reasonable". On page 4, line 8 following "action" insert "must be awarded to the prevailing party". The motion was seconded by Rep. Brown. Rep. Krueger made a substitute motion to Rep. Addy's motion to change the word "must" to "may" because it will give the Court more discretion. Without objection, the committee adopted Rep. Krueger's motion, and the question was called on Rep. Addy's motion. It carried on a voice vote. Rep. Keyser further moved that SB 332 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Gould. There being no further discussion, the question was called, and the motion carried with Rep. Cobb dissenting.

ACTION ON SENATE BILL NO. 294: Rep. Brown moved that SB 294 BE CONCURRED IN. The motion was seconded by Rep. Bergene. There being no discussion, the question was called, and the motion carried unanimously.

ACTION ON SENATE BILL NO. 119: Rep. Brown moved that SB 119 BE CONCURRED IN. The motion was seconded by Rep. Hammond. Rep. Brown submitted a copy of his proposed amendment and moved that it be adopted. The motion was seconded by Rep. Miles. The amendment is as follows:

1. Page 2, line 8.
   Following: "to"
   Strike: "and" through "from" on line 9.

2. Page 2, line 15.
   Following: "PAYMENT."
   Insert: "If the person from whom the support is being collected makes a payment in an amount that is less than the support payment plus the collection fee for that payment, the department may deduct the collection fee from the payment made."

Rep. Brown said that Brenda worked this language out with the department. Rep. Mercer asked Brenda if this amendment was acceptable with the department. Brenda felt that the department should address that particular question. Rep. Brown

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/21/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)		✓	
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

March 21 19 85

MR. Speaker,

We, your committee on Judiciary

having had under consideration Senate Bill No. 332

Third reading copy (Blue color)

LIBRARY CONFIDENTIALITY ACT

Respectfully report as follows: That Senate Bill No. 332 be amended as follows:

1. Page 1, line 23.
Following: "names"
Insert: "or other personal identifiers"

2. Page 2, line 1.
Following: "general"
Insert: "or records that are not retained or retrieved by personal identifier"

3. Page 4, line 7.
Following: "greater"
Strike: ", reasonable"
Insert: ". Reasonable"
Strike: ","

4. Page 4, line 8.
Following: "action"
Insert: "may be awarded to the prevailing party"

DO PASS
AND AS AMENDED,
BE CONCURRED IN

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

EXHIBIT A
3/21/85
SB 332

Mr. Chairman, members of the Committee, my name is Deborah Schlesinger, Legislative Chair of the Montana Library Association. The Montana Library Association supports Senate Bill 332. As Legislative Chair I have traveled far and wide in Montana and I am delighted to report that the Library community, public, special and academic librarians, enthusiastically supports the Confidentiality of Library Records bill.

The Montana library community is aware of the need for protection and due process for both libraries and library patrons. Librarians are very aware that people are not what they read and that a patron's reading habits are and should be private. This bill will not change the way libraries do business, it will afford the protection of the law to librarians and patrons. Now, patrons and librarians do not have the protection of the law even though many libraries in the state do have individual Confidentiality of Library Records policies. Requests for patron reading information come up every day in Montana libraries. Some libraries have been placed in extremely awkward and uncomfortable positions by their refusal to provide such information without due process. Senate Bill 332 addresses these concerns and real needs for Confidentiality of Library Records. Montana Library Association supports Senate Bill 332.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL NO. ~~SB 294 (Sen. Crippen);~~ SB 332 (Sen. Towe); ~~SB 352 (Sen. Lybeck);~~ SB 449 (Sen. Regan); ~~SB 453 (Sen. Van Valkenburg)~~ ~~SJR 19 (Sen. Manning)~~ DATE March 21, 1985

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
JOE THARES	HELENA MT	SB 453	
Mark Adrian	Missoula	SB 294 SB 449	
Karen S. McRae	Missoula	SB 294 SB 449	
Ann Hefferedon	Missoula	SB 294 SB 449	
Oschenski	Helena	SB 332	
Glen Hafstetler	Kalispell	SB 352	
Lois Fitzpatrick	Helena	SB 332	
T. Gregory Hunt	Missoula	SB 453	
Kelly Lowenhaupt	Butte	SB 294 SB 449	
Kevin Whitt	Butte	SB 449	
Lark Francoeur	Butte	SB 449	
[illegible]	Helena	SB 332	
MARC RACICOT	HELENA	SB 453	
Harold Hanson	Billings	SB 453	
Keith Taylor	"	SB 453	
Mike Bahler	Billings	SB 453	
Bob Gutsmith	Butte	SB 453	
Ellen Nelken	Missoula	SB 453	
John Patten	Helena	SB 294 SB 449	
Bob Reid	Missoula	SB 453	
Amy Pfeifer	Missoula	SB 449	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

Lisa Parker State Library SB 332 ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Brenda Schye Mont. Arts Advocacy SB 332

Robert Holmes Helena - MT SB 294

Gail Kline (WLF) Great Falls MT SB 294

CS-33

SENATE BILL NO. 332

INTRODUCED BY TOWE, CRIPPEN, ADDY

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CONFIDENTIALITY OF LIBRARY RECORDS; AMENDING SECTIONS 2-6-101 AND 2-6-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [This act] may be cited as the "Montana Library Records Confidentiality Act".

NEW SECTION. Section 2. Definitions. As used in [section 3], the following definitions apply:

(1) "Library" means a library that is established by the state, a county, city, town, school district, or a combination of those units of government, a college or university, or any private library open to the public.

(2) "Library records" means any document, record, or any other method of storing information retained, received, or generated by a library that identifies a person as having requested, used, or borrowed library material or other records identifying the names OR OTHER PERSONAL IDENTIFIERS of library users. Library records does not include nonidentifying material that may be retained for the purpose

of studying or evaluating the circulation of library materials in general OR RECORDS THAT ARE NOT RETAINED OR RETRIEVED BY PERSONAL IDENTIFIER.

NEW SECTION. Section 3. Nondisclosure of library records. (1) No person may release or disclose a library record or portion of a library record to any person except in response to:

(a) a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library; or

(b) an order issued by a court of competent jurisdiction, upon a finding that the disclosure of such record is necessary because the merits of public disclosure clearly exceed the demand for individual privacy.

(2) A library is not prevented from publishing or making available to the public reasonable statistical reports regarding library registration and book circulation if those reports are presented so that no individual is identified therein.

(3) LIBRARY RECORDS MAY BE DISCLOSED TO THE EXTENT NECESSARY TO RETURN OVERDUE OR STOLEN MATERIALS OR COLLECT FINES.

Section 4. Section 2-6-101, MCA, is amended to read: "2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

REFERENCE BILL

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings, except as provided in [section 3].

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private."

Section 5. Section 2-6-102, MCA, is amended to read:

"2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in [section 3] and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on

payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing."

NEW SECTION. Section 6. Penalty. Any person who violates [section 3] is guilty of a misdemeanor and is liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or $100, whichever is greater, ~~--reasonable~~. REASONABLE attorney fees, and the costs of bringing the action MAY BE AWARDED TO THE PREVAILING PARTY.

NEW SECTION. Section 7. Codification instruction. Sections 1 through 3 and 6 are intended to be codified as an integral part of Title 22, chapter 1, and the provisions of Title 22, chapter 1, apply to sections 1 through 3 and 6.

-End-